

# GEORGIA PESTICIDE CONTROL ACT OF 1976



GEORGIA DEPARTMENT OF AGRICULTURE

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Commissioner

This publication contains the Georgia Pesticide Control Act of 1976, including Amendments passed in 1980 (H.B. 1286).

## **CHAPTER 2-7.                    GEORGIA PESTICIDE CONTROL ACT OF 1976**

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### **Editorial Note**

This Chapter was formerly entitled "Economics Poisons Act" and was based upon Act 1950, pp. 390-404; 1958, pp. 389, 390; 1960, p. 178; 1960, p. 914. It was repealed by Acts 1976, p. 283, the basis for the present Chapter.

### **2-7-50.                    Title**

This article shall be known as the "**Georgia Pesticide Control Act of 1976.**" (Acts 1976, pp. 282, 283, eff. Jan 1, 1977)

### **2-7-51.                    Declaration of Purpose**

The purpose of this article is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, and disposal of pesticides. The General Assembly finds that pesticides are valuable to this state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and on the environment. New pesticides which are valuable to the control of pests and for use as defoliants, desiccants, and plant regulators are continually being discovered or synthesized. The dissemination of accurate scientific information as to the proper use of any pesticide is vital to the public health and welfare and

to the environment, both immediately and in the future. Therefore, it is deemed necessary to provide for regulation of such pesticides. (Acts 1976, pp. 282, 283, eff. Jan 1, 1977)

## **2-7-52. Definitions**

As used in this article, the term:

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests or which will act as a plant regulator, defoliant, or desiccant.

(2) "Adulterated" shall apply to any pesticide:

(A) If its strength or purity falls below the professed standard of quality, as expressed on its labeling or under which it is sold;

(B) If any substance has been substituted wholly or in part for the pesticide; or

(C) If any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.

(4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(5) "Beneficial insects" means those insects which, during their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(6) "Commissioner" means the Commissioner of Agriculture.

(7) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(9) "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals; the term does not include equipment used for the application of pesticides when such equipment is sold separately therefrom.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver pesticides in this state.

(11) "Environment" includes the water, air, and land, all plants and man and other animals living therein, and the interrelationships which exist among these.

(12) "Environmental Protection Agency" means the United States Environmental Protection Agency.

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, and the amendments thereto.

(14) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals and except those in or on processed food, beverages, or pharmaceuticals.

(15) "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of Section 25(c)(2) of FIFRA or by the Commissioner under paragraph (2) of subsection (a) of Code Section 2-7-63.

(16) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to Code Section 2-7-59 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered under the Endangered Species Act of 1973 and any amendments thereto.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient in a pesticide, together with the total percentage of the inert ingredients in the pesticide. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(19) "Insect" means any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(20) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(21) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except for current official publications of:

(i) The Environmental Protection Agency;

(ii) The United States Department of Agriculture;

(iii) The United States Department of the Interior;

(iv) The United States Department of Health and Human Services;

(v) State experiment stations;

(vi) State agricultural colleges; and

(vii) Other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(22) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(23) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts; they may also be called nemas or eelworms.

(24) "Permit" means a written certificate issued by the Commissioner or his authorized agent, authorizing the purchase, possession, or use, or any combination thereof, of certain pesticides or pesticide uses defined in paragraphs (31) and (33) of this Code section.

(25) "Person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons, whether or not incorporated.

(26) "Pest" means:

(A) Any insect, rodent, nematode, fungus, or weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the Environmental Protection Agency administrator declares to be a pest under Section 25(c)(1) of FIFRA or which the Commissioner declares to be a pest under paragraph (1) of subsection (a) of Code Section 2-7-63.

(27) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(28) "Plant regulator" means any substance or mixture of substances, intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof; the term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(29) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

(30) "Registrant" means a person who has registered any pesticide pursuant to this article.

(31) "Restricted use pesticide" means any pesticide whose label bears one or more uses which have been classified as restricted by the administrator of the Environmental Protection Agency.

(32) "Restricted use pesticide dealer" means any person who distributes any restricted use pesticide or any pesticide whose label bears a state restricted pesticide use to any person other than a manufacturer or distributor of pesticides.

(33) "State restricted pesticide use" means any pesticide use which, when carried out in accordance with label directions and other commonly recognized good practices, the Commissioner determines, subsequent to a hearing, to require additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(34) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(35) "Weed" means any plant which grows where not wanted.

(36) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this article, pests, including, but not limited to, mammals, birds, and aquatic life. (Acts 1976, pp. 282, 284, eff. Jan 1, 1977)

## **2-7-53. Misbranded**

The term "misbranded" shall apply:

(1) To any pesticide or device subject to this article:

(A) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) If it is an imitation of or is distributed under the name of another pesticide; or

(C) If any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, or in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(2) To any pesticide:

(A) If the labeling does not contain a statement of the federal use classification under which the product is registered;

(B) If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and which, if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment; or

(C) If the label does not bear:

(i) The name, brand, or trademark under which the pesticide is distributed;

(ii) An ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase, and on the outside container and wrapper of the retail package, if there is such a container and wrapper

through which the ingredient statement on the immediate container cannot be clearly read, provided that the ingredient statement may appear prominently on another part of the container, as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iii) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, would be adequate to protect health and the environment;

(iv) The net weight or measure of the contents;

(v) The name and address of the manufacturer, registrant, or person for whom manufactured; and (vi) The Environmental Protection Agency registration number assigned to the pesticide and the Environmental Protection Agency establishment number if required by regulations under FIFRA;

(D) If the pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to other label requirements:

(i) The skull and crossbones;

(ii) The word "POISON" in red, prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of a practical treatment, first aid or otherwise, in case of poisoning by the pesticide; or

(E) If the pesticide container does not bear a registered label or does not bear a label stating that it is for "experimental use only." (Acts 1976, pp. 282, 288, eff. Jan 1, 1977)

## **2-7-54. Enforcing Official**

This article shall be administered by the Commissioner of Agriculture of this state. (Acts 1976, pp. 282, 283, eff. Jan 1, 1977)

## **2-7-55. Registration**

(a) Every pesticide which is distributed in this state shall be registered with the Commissioner, subject to this article. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and if the pesticide is used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under this article or if the pesticide is distributed under the provisions of an experimental use permit issued under Code Section 2-7-56; provided, further, that after all pesticides have been classified for "General Use" or "Restricted Use" as required by Section 3 of FIFRA, the Commissioner, by regulation, may require the registration of products on a multiple-year basis of two, three, four, or five years.

(b) The applicant for registration shall file a statement with the Commissioner which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) The name of the pesticide;

(3) Other necessary information required for completion of the department's application for registration form; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

(c) The Commissioner, when he deems it necessary in the administration of this article, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

(d) The Commissioner may require a full description of the tests made and the results thereof on which the claims are based on any pesticide not registered pursuant to Section 3 of FIFRA or on any pesticide on which restrictions are being considered. The Commissioner may refuse to consider data he required of the initial registrant of a pesticide use in support of any other application for registration of that same use, unless such subsequent applicant has first obtained written permission to use such data. If data from the original registrant is considered without such permission, the Commissioner shall promptly notify such initial registrant. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(e) The Commissioner may prescribe other necessary information by regulation.

(f) The applicant desiring to register a pesticide shall pay an annual registration fee of \$10.00 to the Commissioner for each pesticide registered for such applicant. All such registrations shall expire on December 31 of any one year, provided that if the Commissioner adopts a multiple-year registration period, the annual registration fee of \$10.00 per product shall be compounded for the number of years included in the multiple-year registration. A registration for a special local need pursuant to subsection (i) of this Code section which is disapproved by the administrator of the Environmental Protection Agency shall expire on the effective date of the administrator's disapproval.

(g) Any registration approved by the Commissioner and in effect on December 31 or, in case a multiple-year registration period is adopted, on the last day of the registration period, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the Commissioner notifies the applicant that the registration has been renewed or denied, in accordance with Code Section 2-7-59. Forms for reregistration shall be mailed to registrants at least 30 days prior to the due date.

(h) If the renewal of a pesticide registration is not filed prior to January 1 of any one year, or by the expiration date in the case of multiple-year registration, the applicable registration fee shall be doubled and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

(i) Provided the state is certified by the administrator of the Environmental Protection Agency to register pesticides for special local need pursuant to Section 24(c) of FIFRA, the Commissioner shall require the information set forth under subsections (b) through (e) of this Code section and, subject to the terms and conditions of that certification, shall register such pesticide if he determines that:



- (1) Its composition is such as to warrant the proposed claims for it;
  - (2) Its labeling and other material required to be submitted comply with the requirements of this article;
  - (3) It will perform its intended function without unreasonable adverse effects on the environment;
  - (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment;
  - (5) The classification for general use or restricted use is in conformity with Section 3(d) of FIFRA; and
  - (6) A special local need exists.
- (j) The Commissioner shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this Code section, one should not be registered in preference to the other. (Acts 1976, pp. 282, 293, eff. Jan 1, 1977)

## **2-7-56. Experimental Use Permits**

(a) Provided the state is authorized by the administrator of the Environmental Protection Agency to issue experimental use permits, the Commissioner may:

- (1) Issue an experimental use permit to any person applying for an experimental use permit, if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under subsection (i) of Code Section 2-7-55. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;
- (2) Refuse to issue an experimental use permit, if he determines that issuance of such permit is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment;
- (3) Prescribe terms, conditions, and a period of time for the experimental use permit, which permit shall be under the supervision of the Commissioner; and
- (4) Revoke or modify any experimental use permit at any time if he finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(b) Any person who has obtained an Environmental Protection Agency experimental use permit for a product to be used in this state shall, before shipping the product into this state, also secure an experimental use permit from the Commissioner. No fee shall be required for any experimental use permit issued under this article. (Acts 1976, pp. 282, 296, eff. Jan 1, 1977)

## **2-7-57. Licensing of Restricted Use Pesticide Dealers**

(a) It shall be unlawful for any person to act in the capacity of a restricted use pesticide dealer, as defined by this article, or to advertise as or assume to act as a restricted use pesticide dealer at any time, without first having obtained an annual license from the Commissioner, which license shall expire on December 31 of each year. A license shall be required for each location or outlet located within this state from which restricted use pesticides or pesticides with state restricted uses are distributed, provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet within this state and who distributes such pesticides directly into this state shall obtain a restricted use pesticide dealer license for his principal out-of-state location or outlet.

(b) Application for a license shall be accompanied by a \$15.00 annual license fee, shall be on a form prescribed by the Commissioner, and shall include the full name of the person applying for such license. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of the outlet to be licensed, the principal business address of the applicant, and any other necessary information prescribed by the Commissioner.

(c) This Code section shall not apply to a licensed pesticide contractor who sells pesticides only as an integral part of his pesticide application service, when such pesticides are dispensed only through equipment used for such pesticide application, or to a federal, state, county, or municipal agency which provides pesticides only for its own programs.

(d) If an application for renewal of a restricted use pesticide dealer license is not filed on or prior to January 1 of any one year, an additional fee of \$15.00 shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(e) Each restricted use pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, or revocation, after a hearing, for any violation of this article or regulations issued hereunder, whether committed by the dealer or by the dealer's officer, agent, or employee. (Acts 1976, pp. 282, 303, eff. Jan 1, 1977)

## **2-7-58. Denial, Suspension, Revocation of License**

The Commissioner is authorized to deny, suspend, or revoke any license, registration, or permit provided for in this article, subject to a hearing and in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in any case in which he finds that there has been a failure or refusal to comply with this article or regulations adopted hereunder. (Acts 1976, pp. 282, 304, eff. Jan 1, 1977)

## **2-7-59. Refusal to Register, Cancellation, Suspension, Legal Recourse**

(a) Provided the state is certified by the administrator of the Environmental Protection Agency to register pesticides formulated to meet special local needs, the Commissioner may act according to the criteria set forth in this Code section in refusing to register such pesticides, in canceling or suspending registration of such pesticides, or in seeking legal recourse against such pesticides.

(b) If it does not appear to the Commissioner that the composition of a pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with this article or regulations adopted hereunder, he shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this article, so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the Commissioner may refuse to register the pesticide. The applicant may request a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) When the Commissioner determines that a pesticide or its labeling does not comply with this article or the regulations adopted hereunder or when necessary to prevent unreasonable adverse effects on the environment, he may cancel the registration of a pesticide or change the classification of a pesticide, after providing opportunity for a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) When the Commissioner determines that there is an imminent hazard, he may, on his own motion, immediately suspend the registration of a pesticide in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Opportunity for a hearing shall be provided thereafter with the utmost possible expedition.

(e) If the Commissioner determines that a federally registered pesticide, with respect to the use of such pesticide within this state, does not warrant the proposed claims for it or would cause unreasonable adverse effects on the environment, he may refuse to register the pesticide as required in Code Section 2-7-55, or, if the pesticide is registered under Code Section 2-7-55, he may cancel or suspend the registration pursuant to this Code section. If the Commissioner determines that the pesticide does not comply with FIFRA or the regulations adopted thereunder, he shall advise the Environmental Protection Agency of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with FIFRA and suggest necessary corrections.

(f) Any person who will be adversely affected by an order authorized in this Code section may obtain judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Acts 1976, pp. 282, 297, eff. Jan 1, 1977)

## **2-7-60. Subpoenas**

The Commissioner may issue subpoenas to compel the attendance of witnesses or the production of books, documents, and records or any combination thereof in this state, in any hearing affecting the authority or privilege granted by a license, registration, or permit issued under this article. (Acts 1976, pp. 282, 305, eff. Jan 1, 1977)

## **2-7-61. Records**

(a) Any person issued a license, permit, or registration under this article may be required by the Commissioner to keep accurate records containing the following information:

(1) The delivery, movement, or holding of any pesticide or device, including the quantity thereof;

(2) The date of shipment and receipt;

(3) The name of consignor and consignee; and

(4) Any other information necessary for the enforcement of this article, as prescribed by the Commissioner.

(b) The Commissioner shall have access to the records required in subsection (a) of this Code section at any reasonable time, in order to copy or make copies of such records, for the purpose of carrying out this article. Unless required for the enforcement of this article, the information derived from such records shall be confidential and, if summarized, shall not identify an individual person. (Acts 1976, pp. 282, 304, eff. Jan 1, 1977)

## **2-7-62. Prohibited Acts**

(a) It is unlawful for any person to distribute any of the following in this state:

(1) Any pesticide which has not been registered pursuant to this article;

(2) Any pesticide, if any of the claims made for it or any of the directions for its use or any labeling differs from the representations made in connection with its registration or if the composition of the pesticide differs from its composition as represented in connection with its registration, provided that a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product, if the registration is amended to reflect such change and if such change will not violate any provision of FIFRA or this article;

(3) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this article and the regulations adopted under this article;

(4) Any pesticide which has not been colored or discolored pursuant to Section 25(c)(5) of FIFRA or paragraph (6) of subsection (b) of Code Section 2-7-63;

(5) Any pesticide which is adulterated or misbranded or any device which is misbranded; or

(6) Any pesticide in containers which are unsafe due to damage.

(b) It shall be unlawful:

(1) To distribute any pesticide labeled for restricted uses to any person who is required by law or regulations promulgated under such law to have a permit or to be certified to use or purchase such pesticide labeled for restricted uses, unless such person or his agent to whom distribution is made has a valid permit or is certified to use or purchase the kind and quantity of such pesticide labeled for restricted uses, provided that subject to conditions established by the Commissioner, such permit may be obtained immediately prior to distribution, from any person designated by the Commissioner;

(2) For any person to detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this article or regulations adopted under this article or to add any

substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article or the regulations adopted hereunder;

(3) For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or the regulations of the Commissioner, if those regulations further restrict the uses provided on the labeling; (4) For any person to use for his own advantage or to reveal, other than to the Commissioner, to properly designated state or federal officials, to employees of the state or federal executive agencies, to the courts of the state or the federal government in response to a subpoena, to physicians, or, in emergencies, to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of Code Section 2-7-55 or any information judged by the Commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this article and marked as privileged or confidential by the registrant;

(5) For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(6) For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or in such a manner as to pollute any water supply or waterway;

(7) For any person to refuse or otherwise fail to comply with this article or the regulations adopted hereunder.

(c) The penalties provided for violations of paragraphs (1) through (5) of subsection (a) of this Code section shall not apply to:

(1) Any carrier, while lawfully engaged in transporting pesticides or devices within this state, if such carrier, upon request, permits the Commissioner to copy all records showing the transactions in and movements of the pesticides or devices;

(2) Public officials of this state and the federal government, while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations;

(3) The manufacturer, shipper, or distributor of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, provided that there is a valid experimental use permit for such pesticide; or

(4) Any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from the use of which the user does not expect to receive any benefit in pest control.

(d) No pesticide or device shall be deemed in violation of this article when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this article shall apply. (Acts 1976, pp. 282, 290, eff. Jan 1, 1977)

**2-7-63. Authority; determination; rules and regulations; restricted use pesticides; and uniformity**

(a) The Commissioner is authorized, after due notice and an opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) To determine whether pesticides registered under the authority of Section 24(c) of FIFRA are highly toxic to man. The regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(2) of FIFRA, as issued or as hereafter amended, shall govern the Commissioner's determinations; and

(3) To determine pesticides and quantities of substances contained in pesticides registered for special local needs which are injurious to the environment. The Commissioner shall be guided by Environmental Protection Agency regulations in this determination.

(b) The Commissioner is authorized, after due notice and a public hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to make appropriate regulations, where such regulations are necessary for the enforcement and administration of this article, including but not limited to regulations providing for:

(1) The collection, examination, and reporting of samples of pesticides or devices pursuant to subsection (a) of Code Section 2-7-69;

(2) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(3) Labeling requirements for all pesticides required to be registered under this article, provided that such regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA;

(4) The specification of classes of devices which shall be subject to paragraph (1) of Code Section 2-7-53;

(5) The determination of which pesticides with restricted uses may be distributed only by licensed restricted use pesticide dealers;

(6) The requirement that any pesticide registered for special local needs should be colored or discolored, if he determines that such requirement is feasible and is necessary for the protection

of health and the environment. Such regulations shall be consistent with regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(5) of FIFRA; and

(7) The establishment of standards for the packages, containers, and wrappings of pesticides registered for special local needs. Such regulations shall be consistent with the regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(3) of FIFRA.

(c) For the purpose of uniformity of requirements between the states and the federal government, the Commissioner, after a public hearing, may adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and issuance of experimental use permits, established by the Environmental Protection Agency or other federal or state agencies. (Acts 1976, pp. 282, 301, eff. Jan 1, 1977)

## **2-7-64. Delegation of Duties**

All authority vested in the Commissioner by virtue of this article may be executed with like force and effect by such employees of the Department of Agriculture as the Commissioner may designate from time to time for such purposes. (Acts 1976, pp. 282, 306, eff. Jan 1, 1977)

## **2-7-65. Cooperation**

The Commissioner may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or of another state for the following purposes, without exclusion:

- (1) To secure uniformity of regulations;
- (2) To enter into cooperative agreements with the Environmental Protection Agency to register pesticides under the authority of this article and FIFRA;
- (3) To cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities or any combination thereof and to implement cooperative enforcement programs including, but not limited to, the registration and inspection of establishments;
- (4) To enter into a contract for monitoring pesticides for the national plan; and
- (5) To prepare and submit state plans to meet federal certification standards or for issuing experimental use permits. (Acts 1976, pp. 282, 306, eff. Jan 1, 1977)

## **2-7-66. Disposition of Funds**

All moneys received by the Commissioner under this article shall be deposited into the state treasury. (Acts 1976, pp. 282, 307, eff. Jan 1, 1977)

## **2-7-67. Publication of Information**

The Commissioner may publish, in such form as he deems proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides, provided that individual distribution information shall not be a public record. (Acts 1976, pp. 282, 305, eff. Jan 1, 1977)

## **2-7-68. Protection of trade secrets and other information**

(a) In submitting data required by this article, the applicant may:

- (1) Clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information; and

(2) Submit such marked material separately from other material required to be submitted under this article.

(b) Notwithstanding any other provision of this article, the Commissioner shall not make public any information which in his judgment contains or relates to trade secrets or any commercial or financial information obtained from a person and considered privileged or confidential, provided that when necessary to carry out this article, information relating to formulas of products acquired by authorization of this article may be revealed to any state or federal agency consulted or as required by law and may be revealed at a public hearing or in findings of fact issued by the Commissioner.

(c) If the Commissioner proposes to release for inspection any information which the applicant or registrant has indicated that he believes is protected from disclosure under subsection (b) of this Code section, he shall notify the applicant or registrant, in writing, by certified mail or statutory overnight delivery. The Commissioner shall not thereafter make such data available for inspection until 30 days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether such information is subject to protection under subsection (b) of this Code section. (Acts 1976, pp. 282, 305, eff. Jan 1, 1977)

## **2-7-69. Enforcement**

(a) Sampling and examination of pesticides or devices shall be made under the direction of the Commissioner for the purpose of determining whether they comply with the requirements of this article. The Commissioner is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times, in order to have access to inspect and sample labeled pesticides or devices packaged for distribution. If it appears upon inspection or examination that a pesticide or device fails to comply with this article or regulations adopted hereunder and the Commissioner contemplates instituting criminal proceedings against any person, the Commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity, within a reasonable time, to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter, in the opinion of the Commissioner, it appears that this article or regulations adopted hereunder have been violated by such person, the Commissioner shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred.

(b) Should the Commissioner be denied access to any land where such access was sought for the purposes set forth in this article, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for such purposes. The court, upon such application, may issue the search warrant for the purposes requested.

(c) The Commissioner is charged with the duty of enforcing the requirements of this article and the rules and regulations promulgated hereunder.

(d) In addition to any other remedy provided in this article, the Commissioner is authorized to bring an action to enjoin a violation of any provision of this article or any rule or regulation promulgated hereunder. In such an action it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law.



(e) Nothing in this article shall be construed as requiring the Commissioner to report minor violations of this article for prosecution or for the institution of condemnation proceedings, when he believes that the public interest will be served best by a suitable notice of warning in writing. (Acts 1976, pp. 282, 300, eff. Jan 1, 1977; 1980 H.B. 1286)

## **2-7-70. "Stop sale, use, or removal" order**

When the Commissioner has reasonable cause to believe that a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this article or of any of the prescribed regulations under this article, he may issue and serve a written stop sale, use, or removal order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the Commissioner may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device shall not be sold, used, or removed until this article has been complied with and until the pesticide or device has been released in writing under conditions specified by the Commissioner or until the violation has been otherwise disposed of as provided in this article by a court of competent jurisdiction. (Acts 1976, pp. 282, 301, eff. Jan 1, 1977)

## **2-7-71. Judicial action after "stop sale, use, or removal" order**

(a) After service of a stop sale, use, or removal order is made upon any person, either that person, the registrant, or the Commissioner may file an action in a court of competent jurisdiction in the appropriate county for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this article or regulations adopted hereunder.

(b) If the pesticide or device is condemned, after entry of decree it shall be disposed of by destruction or sale as the court directs; and if such pesticide or device is sold, the proceeds, less costs, including legal costs, shall be paid to the state treasury as provided in Code Section 2-7-66, provided that the pesticide or device shall not be sold contrary to this article or regulations adopted hereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing, removal from the state, or otherwise bringing the product into compliance.

(c) When a decree of condemnation is entered against a pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. (Acts 1976, pp. 282, 302, eff. Jan 1, 1977)

## **2-7-72. Construction of Chapter**

No provision of this article shall authorize any person to violate any law or any rules or regulations adopted and promulgated thereunder, the administration and enforcement of which are assigned to the Department of Natural Resources or any division thereof or to the Coastal Marshlands Protection Committee. This article shall not be construed as repealing, preempting, modifying, or limiting the authority or functions assigned to the Department of

Natural Resources or its divisions or officials or to the Coastal Marshlands Protection Committee. (Acts 1976, pp. 282, 307, eff. Jan 1, 1977)

**2-7-73. Penalties**

Any person who violates any provision of this article or of the regulations adopted hereunder shall be guilty of a misdemeanor.